IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

WRIT PETITION NO. 2411 OF 2003.

Shri Uddhav Ambadasrao Ashture .... Petitioner

V/s

1)The Union of India, through O/O
General Manager, Telecommunications.

2)The General Manager, Telecommunications, Nashik,

3)Shri B.B.Walekar, (the then Disciplinary Authority now Sub-Divl. Engineer I/C CTO Nashik. .... Respondents.

Mr.G.S.Godbole with N.Mulay, advocate for the petitioner.

Mr.V.S.Masurkar, for the respondents.

CORAM: V.G. PALSHIKAR

AND

V.M. KANADE, JJ.

13th July, 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

By this petition the petitioner has challenged the orders passed by the Central Administrative Tribunal, Bombay in O.A.No.94 of 1995 filed by the petitioner before it.

2. The petitioner was in the employment of the Telecom department and was appointed as Class III Senior Time Scale on 26.3.1984 in the service of Government of India. After having served about eight years the petitioner resigned from service by a communication dated 11.8.1992 which is placed on record as Exhibit `B' at page 26. A perusal of the same will show that it was an unconditional resignation.

3. However on the very next day i.e. 12.8.1992 the petitioner by written communication sought permission to withdraw the resignation dated 11.8.1992. The Government of India through its proper department issued a communication on 14.8.1992 informing the petitioner that his request to withdraw his resignation is rejected. The necessary consequence of such rejection therefore is acceptance of the resignation by concerned department. However the petitioner somehow continued in the department and was doing two jobs or serving with two employers at the same time. He was employed with Government of India as aforesaid and he was also employed by private educational institution and he was performing duties at both the places. It is also pertinent to note that inspite of its written communication dated 14.8.1992 the concerned department of the Union of India suffered the continued working of the petitioner inspite of the fact that his resignation stood validly accepted.

4. On 22.11.1993 the petitioner was charge sheeted for certain misconduct. But that charge sheet was later on dropped and on 12.5.1994 the petitioner was again charge sheeted in which the charges pertained to his dual employment and causing loss to the Government by taking salary from the Government and neglecting the work of the Government in this regard.

5. The petitioner contested the second charge sheet basically on the ground that the relationship of employer and employee between the petitioner and the Union of India ceased with effect from 11.11.1992 as per the resignation dated 11.8.1992. Having so resisted the proceedings the petitioner did not further participate in the proceedings which were completed and the Enquiry Officer who found the petitioner guilty of the charges levelled against him and recommended his removal from service which recommendation was accepted and order was also made directing recovery of the money received by the petitioner as salary for the period that he was not in the employment of Government having resigned from 11.11.1992. It is this order of the department which is challenged in O.A. No.94 of 1995. The Tribunal on consideration of the facts and the law applicable came to the conclusion that the application of the petitioner is liable to rejected and consequently rejected the same. This order of rejection is the subject matter of the present petition.

6. Learned counsel appearing on behalf of the petitioner contended that the relationship of master and servant having ceased to exist on acceptance of resignation letter no departmental proceedings could commence against the petitioner. His second contention was that the petitioner being more factually in the Government employment even after resignation was entitled to receive payments and therefore the order directing recovery of the same is unsustainable in law. The petitioner had tendered resignation on 11.8.1992 to be effective after three months. He then sought to withdraw the resignation by communication dated 12.8.1992. This was rejected by the communication dated 14.8.1992 at Exhibit `D' page 28 which reads thus:

> "With reference to your above cited, it is intimated that no concrete reason is given by the official, as such, the request for cancellation regarding resignation cannot be considered."

It will thus be seen that the Government specifically told the petitioner that his request for cancellation of resignation letter cannot be considered. According to the Government therefore the resignation was proper and could not be withdrawn. As a necessary consequence of this the petitioner stood retired with effect from 11.11.1992. The relationship of master and servant between the petitioner and the Government of India came to an end on that day. It is true that the petitioner thereafter continued to work with the Government but it is also true that thereafter the Government unnecessarily suffered the employment of the petitioner. The fact that the petitioner was

gainfully employed in a private educational institution is not disputed. In our opinion, the submission by the learned counsel that the relationship came to an end from 11.11.1992 the respondents had no jurisdiction to commence any departmental enquiry against the petitioner for any misconduct committed by him after cessation of master and servant relationship. Every allegation in the second charge sheet pertains to his conduct after the resignation became effective. The departmental enquiry and the consequential finding in the circumstances could not be sustained as the commencement of the departmental proceedings on the charge sheet itself was *void ab-initio*.

7. However the petitioner has committed fraud and took double payment for the period he was working in the private education institution. The respondents therefore had the right to commence proceedings for recovery of the said amount over paid. The recovery as ordered by the Disciplinary Authority and confirmed by the Tribunal is consequentially liable to be confirmed by this Court.

8. In the result therefore the petition partly succeeds and is partly allowed. Departmental proceedings culminating in punishments meted out to the petitioner are liable to be quashed and are hereby quashed. That part of the order directing recovery of unnecessary amount paid to the petitioner is liable to be affirmed and is hereby affirmed. The respondent shall have the right to recover the same if not already

recovered. Writ petition thus stands disposed of.